

STATE OF UTAH
COUNTY OF SALT LAKE

**CERTIFIED
TRANSCRIPT**

Utah House of Representatives
2003 General Session
Sponsor: Douglas C. Aagard

NOTICE OF INTENT TO SELL NONPUBLIC
PERSONAL INFORMATION

Date of Proceeding:
Thursday, February 6, 2003

Utah House of Representatives
350 North State, Suite 350
Salt Lake City, Utah 84114

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1	INDEX	
2		
3		PAGE
4	Presentation of HB 40 by Douglas Aagard.....	3
	Comments by John Dougall.....	7
5	Comments by Wayne Harper.....	11
	Comments by Judy Ann Buffmire.....	14
6	Comments by Margaret Ann "Peggy" Wallace.....	16
	Comments by LaWanna "Lou" Miles Shurtliff.....	17
7	Comments by James Dunnigan.....	19
	Comments by Karen Morgan.....	21
8	Comments by Katherine Bryson.....	22
	Comments by Fred LaVar Christensen.....	23
9	Comments by Stephen Urquhart.....	24
	HB 40 Circled.....	25
10	Discussion on HB 40 concluded.....	25
	Certificate of Court Reporter Transcriber.....	26
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1 (Proceedings in Progress.)

2 ***

3 SPEAKER PRO TEM: Representative Aagard...

4 MR. AAGARD: Thank you, Mr. Speaker Pro Tem.

5 This is in reference to HB 40.

6 I'd like to delete, in title and body, HB
7 40, replacing the first substitute HB 40.

8 SPEAKER PRO TEM: Just a minute.

9 MR. AAGARD: Sorry, move to uncircle.

10 SPEAKER PRO TEM: There's a motion to
11 uncircle House Bill 40.

12 Discussion to the motion to uncircle?

13 (No Response.)

14 SPEAKER PRO TEM: Seeing none, back --

15 (Mr. Aagard cross-talking.)

16 SPEAKER PRO TEM: -- to its sponsor to
17 explain his motion to uncircle.

18 MR. AAGARD: I... I want to act on this
19 bill and provide a substitute, so...

20 SPEAKER PRO TEM: Okay. That's the
21 summation?

22 Then, all in favor of uncircling House Bill
23 40 say "aye."

24 (Aye.)

25 SPEAKER PRO TEM: Those opposed say "no."

1 (No Response.)

2 SPEAKER PRO TEM: Motion passes. The bill
3 is uncircled and before us.

4 MR. AAGARD: Thank you for your --

5 SPEAKER PRO TEM: Now, proceed.

6 MR. AAGARD: -- patience, Mr. Chair.

7 I would like to delete, in title and body,
8 HB 40, protection of nonpublic personal information,
9 and replace it with first substitute HB 40, notice of
10 intent to sell nonpublic personal information.

11 If I can speak to that, just briefly?

12 UNIDENTIFIED SPEAKER: Do I have to repeat
13 that motion?

14 SPEAKER PRO TEM: Okay. If you'll speak to
15 that?

16 MR. AAGARD: We're changing the title
17 because it more correctly reflects what the intent of
18 this bill is, and it's incorporating some fine-tuning
19 amendments that took place in committee. So it's just
20 getting it in one bill.

21 SPEAKER PRO TEM: Okay. The motion is that
22 we delete, in title and body, House Bill 40 and replace
23 it with first substitute House Bill 40.

24 All in favor of that action say "aye."

25 (Aye.)

1 SPEAKER PRO TEM: And those opposed say
2 "no."

3 (No Response.)

4 SPEAKER PRO TEM: Motion passes. The bill
5 is before us.

6 You can proceed with the presentation of the
7 bill.

8 MR. AAGARD: Okay. Now, Mr. Speaker, I'd
9 like to move an amendment under my name, amendment
10 number 1.

11 SPEAKER PRO TEM: Okay. The motion is
12 amendment number 1 under Representative Aagard's name,
13 dated January 29th, 2003, 8:54 a.m. We have that.

14 So proceed with the explanation of --

15 MR. AAGARD: This amendment --

16 SPEAKER PRO TEM: -- this motion to amend.

17 MR. AAGARD: -- deletes lines 121 through
18 126 and inserts the text you have before you. And it's
19 just clarifying what we're trying to do in this
20 language here. What we had there was unclear and a
21 little bit cumbersome. So we're just trying to clean
22 that part up, so...

23 SPEAKER PRO TEM: Discussion to the motion
24 to amend?

25 (No Response.)

1 SPEAKER PRO TEM: Seeing none, back to the
2 maker of the motion for summation.

3 MR. AAGARD: I'll waive.

4 SPEAKER PRO TEM: Summation is waived.

5 All in favor of the motion to amend -- which
6 amendment is amendment number 1, dated January 29th,
7 2003 -- all in favor of that motion say "aye."

8 (Aye.)

9 SPEAKER PRO TEM: And all opposed say "no."

10 (No Response.)

11 SPEAKER PRO TEM: Motion passes.

12 Okay. To the discussion to the bill...

13 MR. AAGARD: What this bill does,
14 Representatives, is, if a... It... It... If a... If
15 a commercial entity conducts a transaction and they
16 receive personal information from the consumer and they
17 intend to sell that information for profit or gain,
18 they need to disclose at the time of the transaction
19 that that -- that is going to take place by -- by a
20 notice.

21 SPEAKER PRO TEM: Representative Aagard,
22 they're having a little trouble hearing you. If you'd
23 pull that mic a little closer and speak up?

24 MR. AAGARD: Okay. This bill just requires
25 a commercial entity, if they're going to sell public

1 per- -- or personal information for profit -- that they
2 provide notice to the consumer that they're going to
3 intend to do that.

4 SPEAKER PRO TEM: Okay. Discussion to the
5 bill?

6 Representative Dougall...

7 MR. DOUGALL: Thank you, Mr. Speaker.

8 Would the sponsor yield to a question?

9 SPEAKER PRO TEM: Will the sponsor yield to
10 a question?

11 MR. AAGARD: Yes.

12 SPEAKER PRO TEM: Okay. Proceed.

13 MR. DOUGALL: What is the date that this
14 would be enacted, and would this allow enough time for
15 businesses to comply with this additional regulation?

16 MR. AAGARD: This... It'll be... It'll
17 pertain to information gathered, become effective May
18 5th, '03. Talking with the business people, they felt
19 like that was, at least the business people I talked
20 with, thought that was sufficient time.

21 MR. DOUGALL: Okay. As I read this bill, I
22 understand you have to have this notification, you
23 know, whenever you gather this information. So that
24 would require updating forms, websites, lots of
25 additional information. If this became law, that only

1 allows perhaps a month or so for compliance. I'm
2 concerned that that might not be enough time. Am I
3 unfounded in that?

4 MR. AAGARD: Well, this bill is just going
5 to require a simple notice, as it states in line 114,
6 substantially, that we may choose to disclose nonpublic
7 personal information about you, the consumer, to a
8 third-party for compensation.

9 That's going to be a simple change for these
10 business entities to even put on a website, a single
11 sentence.

12 As far as brick-and-mortar retail stores,
13 they can put a sign on their door or at the checkout
14 stand. In discussing with them this idea through the
15 summer, through the interim process, they feel
16 comfortable with this. They didn't have any objection
17 to it, so...

18 MR. DOUGALL: Mr. Speaker, can I ask a
19 follow-up question?

20 SPEAKER PRO TEM: Certainly. Proceed.

21 MR. DOUGALL: Another question I have is, as
22 I look at the fiscal note, it says -- and I'm not sure
23 if there was an updated fiscal note that goes along
24 with this substituted amended bill --

25 UNIDENTIFIED SPEAKER: What was the fiscal

1 note?

2 MR. DOUGALL: -- but it says that some
3 companies now selling this information may see a
4 reduction in sales.

5 Is it not possible that some companies who
6 are in this business may be pushed out of the state
7 and we will see a loss of jobs and other factors in
8 this state because of the additional regulations we'll
9 have that neighboring states do not have?

10 MR. AAGARD: Representative, that's a good
11 question. I don't know what the impact would be. All
12 I can tell you is the retailers associations that I've
13 spoken with have taken a neutral position on this.
14 I've worked with them closely. They're not opposed. I
15 think there's a right to privacy that an individual
16 deserves.

17 How they handle this, whether they want to
18 build into their marketing or whatever, uh, opt-out
19 provisions, they can do that. I don't know what the
20 impact will be. But the consumer will be informed and
21 the consumer will have the choice.

22 MR. DOUGALL: Another question is, we get
23 towards the end of the bill, as I understand it, and
24 correct me if I'm wrong, it says that a commercial
25 entity that violates this chapter is liable to the

1 person who brings the action.

2 Now, is that the person whose information
3 was distributed without authorization, or is that any
4 person that brings an action?

5 MR. AAGARD: That is the consumers whose
6 information was sold.

7 MR. DOUGALL: Okay. And does that... I
8 guess my question would also be, does this open us up
9 to somebody whose information was distributed,
10 searching for who perhaps did it, not knowing which
11 company did it, and then starting to sue lots of these
12 companies, trying to figure out who's the one that
13 distributed it without authorization?

14 MR. AAGARD: I don't think so.

15 Like I said, we've studied this. It's been
16 a year in study. And all interested parties that I
17 know of are okay with the way this thing is written,
18 and the penalties. I purposely limited the penalties
19 just to avoid, uh, to take care of any unintended
20 consequences. So I think we're fine.

21 MR. DOUGALL: I would just like to encourage
22 the body, this is a bill that has some serious
23 consequences on business, and I understand the intent
24 of it, but I would encourage you, if you haven't read
25 it, please read it. Take five minutes, read the bill,

1 see what it requires. Think about the unintended
2 consequences that come along with this. Thank you.

3 SPEAKER PRO TEM: Okay. Representative
4 Harper...

5 MR. HARPER: Thank you.

6 Will the sponsor yield to question?

7 SPEAKER PRO TEM: Will the sponsor yield to
8 a question?

9 MR. AAGARD: Yes.

10 SPEAKER PRO TEM: Proceed.

11 MR. HARPER: Will you go through and
12 highlight, first of all, the differences between your
13 bill, as amended, and the substitute bill?

14 MR. AAGARD: Let's see. Just let me find it
15 here, just a second.

16 I apologize for that, Representative.

17 On the original bill, page 2, line 55, we
18 inserted the definition of some clarifying language on
19 consumer transaction on pages 4 to 5, lines 119 to 125.
20 We deleted the lines 119 to 125. On page 5, line 130,
21 we inserted the effective date. And I think that
22 covers most of the changes. It was changes made in
23 committee.

24 MR. HARPER: Okay. The purpose of this bill
25 is to go through and restrict businesses' ability to go

1 through and gather personal information or just share
2 it with nonrelated parties or share it -- not share it
3 internally with related institutions? Could you flesh
4 that out a little bit?

5 MR. AAGARD: Yeah, good question.

6 The purpose of this bill, I'm not trying to
7 restrict necessarily as to, just to provide notice to a
8 consumer that their information is going to be sold,
9 and that's the sole purpose of the private information.

10 If a company gathers that information and
11 sells it for the sole purpose of making a profit, then
12 I feel that needs to be disclosed. If it's to be made
13 whole in a transaction, they're not impacted by this
14 bill.

15 MR. HARPER: Okay. But your overall intent
16 of this is to go through and identify the need for
17 securing information and having a person, when it falls
18 under the purview of the state, go through and be able
19 to restrict the amount of personal information that is
20 available; is that correct?

21 MR. AAGARD: To notify the consumer. I
22 guess I'm not sure what you mean by restricting the
23 information.

24 MR. HARPER: Okay. This is a notification.
25 It's not any ability to go through and restrict the --

1 MR. AAGARD: Right. I'm not prohibiting the
2 business of selling this information. It's strictly
3 notice. If they want to sell it, they can sell it,
4 that's fine.

5 MR. HARPER: Okay. So what option does the
6 consumer have other than the notice if they don't want
7 that information released to somebody else or sold to
8 someone else?

9 MR. AAGARD: Well, I... My intent on this
10 is, if I go into a store and I see that notice that
11 they're going to sell my information, then I would need
12 to make a choice as to whether I want to conduct a
13 transaction with that business or go elsewhere. I did
14 not want to force the business to change their policies
15 with opt-out or opt-in. If they feel like, to comply
16 with this they want to do that, they can. But I want
17 it to be the consumer choice.

18 MR. HARPER: I appreciate what you're doing.
19 A lot of the groups are pushing more for the opt-out
20 and opt-in. The notice is an essential part of what
21 needs to be done to help the residents of the state of
22 Utah and elsewhere to understand the choices they make,
23 to have informed choices. I think there's some other
24 questions that others might have with some of the
25 sections, but I commend you for what you're trying to

1 do, at least giving the notice and information out.

2 SPEAKER PRO TEM: Representative Buffmire...

3 MS. BUFFMIRE: Thank you, Mr. Speaker.

4 Would the representative -- let's see, I
5 haven't done this yet -- would -- would yield?

6 And can I ask a question?

7 SPEAKER PRO TEM: Yes.

8 Will the sponsor yield to a question?

9 MR. AAGARD: Yes --

10 MS. BUFFMIRE: Thank you.

11 MR. AAGARD: -- yes, ma'am.

12 MS. BUFFMIRE: Thank you.

13 SPEAKER PRO TEM: Proceed.

14 MS. BUFFMIRE: I'm sorry. I... I don't
15 know if I'm speaking for or against your bill, so
16 that's why the -- the question.

17 SPEAKER PRO TEM: You need to speak up. I
18 can't hear you.

19 MS. BUFFMIRE: Oh, goody.

20 SPEAKER PRO TEM: Hold that microphone real
21 close.

22 MS. BUFFMIRE: Okay. You know, to me, it's
23 the timing. I don't know if you've gone far enough.

24 One of the real irritations in my life is to
25 get once every, it seems like a few months -- it's

1 probably every year -- the same people sending me the
2 same notice that I have written and said that I do not
3 want them to sell any information or sell my name on a
4 list. And by the time they get the computers shipped,
5 or whatever it is, you've got ten more new people
6 sending me catalogs or something. And you get this
7 notice again.

8 I... And I don't know. And it really is an
9 irritation to me 'cause I don't know what they consider
10 personal and what they consider nonpersonal.

11 My name, to me, is very personal.

12 And they're selling lists everywhere. And
13 so I don't know if you go far enough. Could you
14 address that in any way? Because if, even someplace,
15 you said, once it's there, they can't sell it in the
16 future until they've been notified they can.

17 MR. AAGARD: Representative, that's a real
18 good question. I really struggled with that over this
19 past year. The thing I discovered with this is, it's
20 an elephant, it's huge.

21 MS. BUFFMIRE: I know.

22 MR. AAGARD: And my course of action, what
23 I've chosen to do is take one bite at a time on this
24 and deal with things as they move along. I don't want
25 to move too fast 'cause we need to be very careful for

1 this type of issue just because of where it reaches.

2 This isn't the end on this thing. I plan on
3 doing some more things with this.

4 MS. BUFFMIRE: Okay.

5 MR. AAGARD: So I'm just trying to take a
6 cautious approach so that we don't have some problems.

7 MS. BUFFMIRE: I appreciate that answer.
8 Thank you. I just... I wish we could do something to
9 protect this invasion, it seems to me, of any
10 information we have. Thank you.

11 SPEAKER PRO TEM: Thank you.

12 Representative Wallace...

13 MS. WALLACE: Thank you, Mr. Speaker Pro
14 Tem.

15 While I have a certain amount of
16 disappointment because this bill does not go nearly far
17 enough regarding privacy and private information of all
18 individuals, I would support it.

19 The concern that we have about businesses
20 that are operating where they need all of that
21 information about me, every single bit of it, or about
22 my neighbors or my family or my friends, I don't think,
23 just because we exist, that everybody around us has the
24 right to tiptoe through all of our information and
25 everything that describes who and what I am.

1 We have choice in this country. We have
2 agency. We have the right to privacy. And I think
3 that there comes a time where we have to take the stand
4 and say, okay, this is a line. You do not get to go
5 beyond that. And when people are taking that
6 information, selling it for profit so that another
7 individual can use it for profit, I don't think they
8 have the right to do that without my express permission
9 to do so.

10 So I applaud the representative for bringing
11 this forward and would encourage him to tighten up
12 those privacy laws. Thank you.

13 SPEAKER PRO TEM: Thank you.

14 Representative Shurtliff...

15 MS. SHURTLIFF: Thank you, Mr. Speaker Pro
16 Tem.

17 Would the sponsor yield to some questions?

18 SPEAKER PRO TEM: Will the sponsor yield?

19 MR. AAGARD: Yes.

20 SPEAKER PRO TEM: Proceed.

21 MS. SHURTLIFF: This bill, at this point, is
22 very confusing to me. And so just help me a little bit
23 so I make sure that I'm on the right track.

24 If I go into a retail establishment and
25 purchase something, they often ask for my telephone

1 number. In doing that, of course, that gives them,
2 pretty well, some information about me.

3 Now, am I right in this bill that they would
4 have to post that they're going to possibly sell that
5 information?

6 MR. AAGARD: In the bill it defines public
7 information as name, address, and phone number. So in
8 that case, if it's just the telephone number they're
9 taking, no, they wouldn't have to provide notice. And
10 even if they did take your telephone number, they would
11 not need to provide notice unless they sell that
12 information for profit.

13 MS. SHURTLIFF: Okay. But when they get my
14 telephone number, the computer automatically puts up
15 mine and my husband's name and address possibly, okay,
16 so they post that. And only if they're going to sell
17 it for profit. Now, is that as far as this bill goes?

18 MR. AAGARD: Yes. Yes. If they sell...

19 If the business entity sells the personal
20 information to a third party for profit, that's as far
21 as this bill goes.

22 MS. SHURTLIFF: Now, many of these companies
23 are national companies. So can we do that or would that
24 just regulate the Utah consumer?

25 MR. AAGARD: This would pertain to companies

1 domiciled in the state of Utah.

2 MS. SHURTLIFF: Okay, thank you.

3 SPEAKER PRO TEM: Representative Dunnigan...

4 MR. DUNNIGAN: Thank you, Mr. Speaker Pro
5 Tem. I'd like to reserve the right to make a motion.

6 SPEAKER PRO TEM: That right will be so
7 noted.

8 Proceed.

9 MR. DUNNIGAN: I have a question for this
10 sponsor.

11 SPEAKER PRO TEM: Will the sponsor yield to
12 a question?

13 MR. AAGARD: Yes.

14 SPEAKER PRO TEM: Proceed.

15 MR. DUNNIGAN: The gist of this bill is just
16 to require an establishment to post a notice?

17 As long as they've done the notice, they've
18 met the requirement?

19 MR. AAGARD: Yes.

20 MR. DUNNIGAN: Thank you.

21 I... I understand what you're trying to do.
22 I... I think the bill's a little confusing and I think
23 it's a little cumbersome. I don't think it provides a
24 great deal of protection to the consumer. All the
25 business has got to do is post a notice, and people

1 will just be used to seeing those, and they'll probably
2 ignore them and not realize it, anyway.

3 I... I think the bill might need a little
4 more work. I think... The bottom line is, all they
5 have to do is put up a notice and they've satisfied the
6 requirement. And it's a lot of, a lot of verbiage and
7 a lot of language to accomplish that simple task. And
8 I, I... I think it needs a little more work. And it's
9 pretty confusing to me.

10 I would move to circle the bill.

11 SPEAKER PRO TEM: You can only reserve the
12 right, uh, a motion if you want to make an amendment.
13 Reserving the right to make a motion and then circling
14 is out of order.

15 MR. DUNNIGAN: That's what I understood.
16 But I asked a more experienced legislator if I could
17 speak and then make a motion. She assured me that I
18 could.

19 (Laughter.)

20 SPEAKER PRO TEM: Well, if you believe
21 everything every legislator tells you --

22 (Laughter.)

23 SPEAKER PRO TEM: -- I want to talk with
24 you, real quick.

25 MR. DUNNIGAN: Thank you, Mr. Speaker.

1 SPEAKER PRO TEM: Thank you.

2 Representative Morgan...

3 MS. MORGAN: Thank you, Mr. Speaker Pro Tem.

4 Will the sponsor yield to a question?

5 MR. AAGARD: Yes.

6 MS. MORGAN: In looking at the definition of
7 nonpublic personal information, included in that would
8 be a person's Social Security Number.

9 And I am just wondering if you can tell us
10 what restrictions are currently in place on these
11 business entities to keep them from selling this
12 personal information.

13 MR. AAGARD: If they don't fall under any
14 federal notice requirements, then there are none. And
15 that's what we're trying to get to.

16 MS. MORGAN: Okay. My concern is that, I
17 hope we're not opening the door and making them feel
18 that, if they just give a notice, then it's okay for
19 them to go ahead and sell this public -- or this non-
20 personal public... What is it? The nonpublic personal
21 information. That's my fear. So I just wanted to make
22 that comment. Thank you.

23 MR. AAGARD: Thank you.

24 Just in response to that, Legislators, I'm
25 not trying to encumber. I'm trying to not encumber

1 business anymore than I absolutely feel is necessary in
2 this. I want the individual consumer to take upon
3 themselves the responsibility to follow through on the
4 transaction. I think they need to be responsible for
5 their choices. I think this is a good balance at this
6 time.

7 SPEAKER PRO TEM: For the discussion,
8 Representative Bryson...

9 MS. BRYSON: Thank you, Mr. Speaker.
10 I would make a motion to circle.

11 SPEAKER PRO TEM: Really, that's a surprise.
12 (Laughter.)

13 SPEAKER PRO TEM: The motion is that we
14 circle.

15 Representative Bryson, proceed.
16 Did you want to speak to that?

17 MS. BRYSON: Thank you. I would. It is
18 based on ineptness. First of all, never give a
19 freshman legislator any advice.

20 The reason that I believe that we should
21 circle this is because there are a number of questions.
22 I have some questions concerning the exemptions for a
23 few select businesses. I have... Uh, really, I guess
24 the basis of my concern has to go back with just the
25 simplification that I thought might be in the bill as

1 far as notification and notice.

2 And as well, I have some concerns about
3 businesses. I know the sponsor did say that retail
4 businesses have been contacted, but I, myself, have
5 been trying to reach some of the businesses in my
6 community to see just how cumbersome this might be.

7 And so, with that, I would move to circle
8 and hope that the sponsor would be amenable to that.

9 SPEAKER PRO TEM: For the discussion to the
10 motion to circle, Representative Aagard, to the motion
11 to circle?

12 MR. AAGARD: I'm okay. I'd be happy to talk
13 with anybody and clarify the bill, so...

14 SPEAKER PRO TEM: Okay. Representative
15 Christensen, to the motion to circle?

16 MR. CHRISTENSEN: Thank you, Mr. Speaker.

17 I, for all the reasons mentioned, concur
18 with the motion to circle, but wanted to highlight
19 Representative Morgan's concerns.

20 I'm concerned that the headline, notice of
21 intent to sell nonpublic, implies that there's a right
22 to sell nonpublic information, and I'm not so sure that
23 that right exists or that it's been adequately defined.

24 At a minimum...

25 (Proceedings interrupted by

1 Representative Urquhart.)

2 SPEAKER PRO TEM: Well, state your point,
3 Representative Urquhart.

4 MR. URQUHART: This isn't germane to the
5 motion on the floor.

6 SPEAKER PRO TEM: Okay. The motion is the
7 motion to circle, Representative Urquhart.

8 MR. CHRISTENSEN: That's my point is this is in
9 support of the motion to circle.

10 SPEAKER PRO TEM: Okay. Go ahead.

11 MR. CHRISTENSEN: All I wanted to give was the
12 added reason for circling was that I'd like to suggest
13 that there be an adequate reference that ties down what
14 it is they have a right to do. And at that point,
15 everyone appreciates the additional protection of a
16 notice of intent layer of protection as well. I
17 thought that was Representative Morgan's point. I
18 thought it was well taken. And it's in support of the
19 motion to circle.

20 SPEAKER PRO TEM: For the discussion of the
21 motion to circle seen and Representative Bryson for
22 summation to the motion to circle?

23 MS. MORGAN: I'll waive, thank you.

24 SPEAKER PRO TEM: Summation's waived.

25 The motion is we circle for substitute House

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Bill 40.

Those in favor of the motion say "aye."

(Aye.)

SPEAKER PRO TEM: Oppose, say "no."

("No.")

SPEAKER PRO TEM: Motion passes.

The bill is circled.

(House Bill 40 discussion concluded.)

CERTIFICATE OF COURT REPORTER TRANSCRIBER

THE STATE OF FLORIDA)

COUNTY OF MIAMI-DADE)

I, DIANNE N. SARKISIAN, a Certified
Stenographic Court Reporter for the State of Florida
at Large, do hereby certify that I transcribed Utah
House of Representatives, 2003 General Session, House
Bill 40, Notice of Intent to Sell Nonpublic Personal
Information, held on February 6, 2003; that the
foregoing constitute a true, complete record of my
transcription.

I further certify that I am not an attorney
or counsel of any of the parties, nor related to any
of the parties, nor financially interested in the
action.

Dated this 14th day of MARCH 2024.

Dianne N. Sarkisian

Dianne N. Sarkisian
Notary Public - State of Florida
My Commission No. HH 483698
Expires: 02-18-2028